

SERVED: July 22, 1993

NTSB Order No. EA-3938

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9th day of July, 1993

_____	)	
JOSEPH M. DEL BALZO,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-8721
v.	)	
	)	
WILLIAM JOSEPH SERRA,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent appeals from the oral initial decision of Administrative Law Judge William E. Fowler issued at the conclusion of an evidentiary hearing on February 12, 1991.<sup>1</sup> The law judge's decision affirmed an order of the Administrator revoking respondent's commercial pilot and certified flight instructor certificates for his conviction for conspiracy to

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<sup>1</sup>A copy of the initial decision, an excerpt from the transcript, is attached.

import methaqualone. The Administrator's order alleged violations of Federal Aviation Regulation (FAR) section 61.15, 14 C.F.R. Part 61<sup>2</sup> and Section 609(c) of the Federal Aviation Act of 1958, 49 U.S.C. §1429(c), the "Act."<sup>3</sup> The Board now affirms the initial decision.

The Administrator's amended order of revocation alleged in pertinent part, the following facts:

1. At all times material herein you were and are the holder of Commercial Pilot and Certified Flight

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<sup>2</sup>FAR section 61.15 provided in pertinent part at the time of the incident as follows:

**"§ 61.15 Offenses involving alcohol or drugs.**

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

\* \* \* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part."

<sup>3</sup>49 U.S.C. §1429, in pertinent part, reads as follows:

**"§ 1429 Reinspection or reexamination; amendment, suspension, or revocation of certificate.**

\* \* \* \* \*

**(c) Transportation, distribution and other activities relating to controlled substances.**

(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to a simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under the paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance."

Instructor Certificates No. 002129174.

2. On or about March 27, 1987, in the U.S. District Court for the Southern District of Florida you were convicted of conspiracy to import methaqualone, in violation of Title 21 U.S. Code Section 963.

3. It was part of the conspiracy to operate civil aircraft N6451L, a Piper PA-31 within the United States with methaqualone aboard.

4. By reason of the above, you have demonstrated that you lack the qualifications necessary to hold an airman pilot certificate.

Respondent, represented by counsel, did not testify at the hearing nor did he present any evidence. On appeal, he contends that the Administrator's evidence was not sufficient to show a violation of Section 609 because the Administrator allegedly failed to prove that an aircraft was involved in respondent's offense.<sup>4</sup> This is so, according to the respondent, because Exhibit A-4, the FAA's Report of Investigation, which referred to the use of an aircraft in connection with the conspiracy of which respondent was found to have been a part, was inadmissible as double or triple hearsay. Respondent also asserts that Exhibit A-2, the indictment for conspiracy to import methaqualone, standing alone, did not provide sufficient evidence to show that respondent piloted an aircraft or was aboard an aircraft used in connection with the conspiracy. For these reasons, respondent maintains, a violation of Section 609 was not proven and revocation should not have been sustained.<sup>5</sup> We disagree.

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<sup>4</sup>Respondent does not argue that the law judge erred in finding that he violated FAR section 61.15.

<sup>5</sup>The Administrator has filed a reply brief opposing the

Exhibit A-4 was a copy of the FAA's Report of Investigation prepared by an FAA investigator who had retired by the time of the hearing and did not testify. It is clear from the report that an aircraft was involved in the respondent's offense. Count IV of the indictment also implied that an aircraft was involved in the respondent's offense. It named respondent as a co-defendant and made reference to the use of an airplane in the conspiracy. The combination of the investigation report and the indictment provide a *prima facie* showing that an aircraft was involved in the respondent's offense. See, *Administrator v. Beahm*, NTSB Order No. EA-3769 (January 21, 1993).

The investigation report, albeit multiple hearsay, was properly admitted. As we recently had occasion to observe in *Administrator v. Repacholi*, NTSB Order No. EA-3888 (served June 21, 1993), at p. 4:

We regard the proper approach to multiple hearsay as nearly identical to that applicable to hearsay itself.

The law judge may weigh it, taking into account its remoteness and reliability. Where hearsay within hearsay carries with it sufficient indicia of trustworthiness and the interests of justice will best be served by admission of the statement in evidence, we do not see why it should be deemed inadmissible or insufficient to provide a substantive basis for a decision.

(..continued)  
appeal.

Consistent with these principles, the law judge properly admitted the report and gave it the appropriate weight taking into consideration the fact that no contradictory evidence was presented in rebuttal.<sup>6</sup>

Nevertheless, even without the investigation report and other indications of aircraft use in connection with respondent's Federal drug conviction, we believe the seriousness of the respondent's offense reveals him to be an individual lacking in the care, judgment, and responsibility required of the holder of a pilot certificate. See *Administrator v. Kolek*, NTSB Order EA-2402 at p. 5 (1986), *aff'd Kolek v. Engen*, 869 F.2d 1281, 1286 (9th Cir. 1989). Consequently, revocation would be appropriate under the section 61.15 charge, whether or not the proof was sufficient to show that respondent had violated Section 609 of the Act.

For the foregoing reasons, we find that safety in air commerce or air transportation and the public interest require the affirmation of the Administrator's order.

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<sup>6</sup>Our decision in *Repacholi* (*Id.* at 5) further held: "[w]e recognize that statements in prior Board decisions indicate that hearsay within hearsay is per se inadmissible in Board proceedings. We overrule all such holdings and statements and expressly overrule such holdings and statements in *Administrator v. Smith*, 2 NTSB 2527, 2528 (1976); and *Administrator v. Niolet*, 3 NTSB 2846, 2849 (1980).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The initial decision is affirmed;
2. The respondent's appeal is denied; and
3. The Administrator's order revoking respondent's commercial pilot and certified flight instructor certificates is affirmed.<sup>7</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup>For purposes of this opinion and order, the respondent must physically surrender his certificates to an appropriate representative of the Administrator, pursuant to FAR section 61.19(f).